

1 further modified that, that it can't be a new
2 translator that could be used with it; it has
3 to be a translator that has been in existence
4 prior to some date. I have no idea why the
5 Commission picked that date but nevertheless
6 they did.

7 The reason translators have any
8 value today is largely because of the
9 utilization with AM.

10 But also, the only way you can get
11 a translator today is waiting for a window to
12 open. And as only the Commission can, they
13 haven't opened a window in three or four years
14 for FM translators and it doesn't look like
15 there's going to be a window opening before I
16 retire, (Laughter) so therefore, the
17 Commission essentially by their inefficiency
18 is allowing the prices of translators to go
19 up.

20 The reason the translators are
21 still dirt cheap --

22 ADMIN. JUDGE SIPPEL: What is dirt

1 cheap?

2 MR. SHAINIS: They are dirt cheap.

3 ADMIN. JUDGE SIPPEL: What is, the
4 translators are?

5 MR. SHAINIS: The translators.
6 Because they're essentially -- if you look at
7 an FM -- well, first of all, economic times
8 are such that -- let me do an example.

9 Twenty-five years ago a translator
10 is probably \$3-5,000. That's how much it
11 would cost. The average price of a translator
12 today I'm going to venture to say, my
13 experience, is probably is about \$10-15,000,
14 maybe \$20,000.

15 I don't know why Wilks was willing
16 to pay -- because probably that's what Eddie
17 Floyd was insisting or John Schroeder or
18 whatever -- the \$50,000. But Evans is willing
19 to pay \$20,000 for it and that's probably
20 overpaying at that.

21 MR. HARRINGTON: I think the
22 reason that Wilks-Reno was willing to buy it

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1 -- I can't tell you why they picked the price
2 they picked -- was because that station does
3 improve the signal quality into the Carson
4 City area, which the translator's licensed to
5 serve.

6 Carson City is the capital of
7 Nevada, although it's a quite small city. I
8 think that was a population area for whatever
9 reason for, I think, a jazz station -- I
10 assume KJZS is jazz format -- that they wanted
11 to be in, be able to provide a signal into.

12 I have also seen correspondents at
13 very high levels in the company internal that
14 basically questioned, "Why are we doing this?
15 It doesn't make any sense," and nobody listens
16 to them. But there you go.

17 ADMIN. JUDGE SIPPEL: Okay, well
18 what kind of price can disclose this, what
19 kind of a price were they talking to Mr. Floyd
20 about?

21 MR. HARRINGTON: The price that's
22 in the contract that was filed with the

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1 Commission as part of the application is
2 \$50,000, of which \$10,000 was paid in cash as
3 a deposit, unfortunately.

4 ADMIN. JUDGE SIPPEL: We heard
5 about that in the last prehearing.

6 MR. HARRINGTON: Yes, Your Honor.

7 ADMIN. JUDGE SIPPEL: Well
8 sometimes the business world really can be
9 mystifying sometimes.

10 So if this gets approved the
11 station would get auctioned off, and the best
12 you could ever hope to get at an auction would
13 be something like \$50,000, and that money goes
14 to pay off the creditors?

15 MR. HARRINGTON: Yes. In the real
16 world, I mean --

17 MR. SHAINIS: In the real world,
18 first of all, the amount of money that is
19 going to be gotten -- I think that the Floyd
20 debts amount to over \$1 million, so every cent
21 of this would be used to pay innocent
22 creditors.

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1 Neither Mr. Floyd or his wife are
2 creditors, none of their family are creditors.
3 So nothing is going to be paid directly or
4 indirectly to the Floyds.

5 MR. HARRINGTON: Again, to make
6 the record clear, Wilks has no intention to
7 bid at any auction for the translator.

8 ADMIN. JUDGE SIPPEL: Well I wonder
9 why. I'm not going to speculate why.

10 My only connection with
11 translators in a case was many years ago, a
12 Peninsula case where somebody up in Alaska had
13 a string of these translators. The case went
14 off on fraud allegations as usual.

15 There was a lot of litigation.
16 Not only a long proceeding that I had, but it
17 was in and out of the Circuit Court at least
18 twice.

19 Finally the Commission approved my
20 decision. It approved by the Court of
21 Appeals, certiorari was turned down. You
22 return the files back to the dead spot and

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1 everything.

2 About two months later I get an
3 order from the Commission saying that
4 President Bush had just signed an order
5 approving legislation that somehow or other
6 carved these things out, and case closed.

7 So, there you go. These things
8 sometimes do wind around and have a funny
9 ending.

10 But I feel that that must have
11 been -- there must have been value there,
12 because this person or this group was paying
13 an enormous amount of legal fees to get this
14 done. They had excellent counsel. They just
15 kept it going.

16 Anyway, that's an aside.

17 Are you satisfied with that; is
18 there anything more you want to hear about it?

19 I'm looking at Ms. Leavitt.

20 MS. LEAVITT: Yes, Your Honor. I
21 pretty much follow what they're saying, and it
22 is consistent with what I understand of this

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1 in-Contour translator station.

2 ADMIN. JUDGE SIPPEL: I want to
3 just ask one more thing.

4 Mr. Floyd is saying that since
5 2007 they've been in there using this thing,
6 they being Wilks. It sounds like -- I mean,
7 it's hard to figure out what kind of a
8 relationship there is.

9 You've explained it quite a bit,
10 Mr. Shainis.

11 Is he looking for any compensation
12 for the use of it?

13 MR. SHAINIS: Who is he?

14 ADMIN. JUDGE SIPPEL: Floyd, Mr.
15 Floyd.

16 MR. SHAINIS: No. Not only is he
17 not looking for any compensation, he wouldn't
18 be able to obtain it legally.

19 ADMIN. JUDGE SIPPEL: At that time
20 he couldn't have obtained it legally?

21 MR. SHAINIS: No.

22 ADMIN. JUDGE SIPPEL: That's

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1 right.

2 MR. SHAINIS: No.

3 ADMIN. JUDGE SIPPEL: Because you
4 said that they had barred -- they had stopped
5 that practice of -

6 MR. SHAINIS: Right.

7 ADMIN. JUDGE SIPPEL: So that was
8 just kind of like the squatter's rights
9 almost, he just walked in and started to use
10 it. Some kind of relationship here.

11 MR. HARRINGTON: Your Honor, we're
12 really not -- the relationship is we are
13 permitting him to rebroadcast the signal. So
14 it's not -- we are not actually using the
15 station, but the station is carrying the
16 signal of our primary station.

17 ADMIN. JUDGE SIPPEL: Ah.

18 MR. SHAINIS: Because the station
19 can't do anything independently of a full-
20 service station.

21 ADMIN. JUDGE SIPPEL: And this
22 keeps -- I'm sorry. I didn't mean to

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1 interrupt. Then that keeps the licensee's
2 license from going forfeit to silent?

3 MR. SHAINIS: That's right.

4 ADMIN. JUDGE SIPPEL: And
5 basically -

6 MR. SHAINIS: That's correct.

7 ADMIN. JUDGE SIPPEL:

8 -- forfeiting?

9 MR. SHAINIS: There was --
10 approximately 30 years ago Bible Broadcasting
11 -- no, it was Moody Bible College; I'm sorry
12 -- filed a rulemaking at the Commission to
13 allow origination of programming on
14 translators.

15 The Commission basically, and
16 essentially what they said was, "Look. Let's
17 create" -- and it was ahead at the time --
18 "low-power FM. Let's do this." That was
19 pending for at least three or four years.

20 People started warehousing FM
21 translators, and it was unbelievable, figuring
22 that they would now hit the lottery if this

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1 thing ever happened.

2 It never happened and the people
3 now are stuck with a lot of these assets.
4 Therefore, you do the best you can and you try
5 to get the programming from some station.

6 MR. HARRINGTON: The alternative
7 that the Commission came up with was its low-
8 power FM stations, which are only available to
9 nonprofit local community organizations. And
10 use essentially the same facilities that a
11 translator would use, except it can originate
12 programming.

13 MR. SHAINIS: That's correct.

14 MR. HARRINGTON: That is another
15 thing that has put pressure on the translator
16 field, in that there are no frequencies being
17 made available to translators because the
18 Commission wants to maximize the number of
19 low-power FMs it can create to allow local
20 community organizations to get on the air.

21 ADMIN. JUDGE SIPPEL: They don't
22 want the competition from the translators?

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1 MR. SHAINIS: Well, it's a
2 scarcity spectrum.

3 ADMIN. JUDGE SIPPEL: A scarcity
4 spectrum? Right.

5 I'm just quizzical as to, just for
6 my own edification, why would the Commission
7 want to stop this practice of translators
8 making or renting getting some commercial
9 value out of the translators, renting them out
10 or something.

11 MR. SHAINIS: Actually, it was a
12 political decision. The broadcasters have
13 never really liked the utilization of
14 translators.

15 Because basically what happens is,
16 as opposed to a booster which is on-channel,
17 this is on a different channel. Therefore
18 it's viewed as maybe not double competition,
19 but one and a half competition.

20 MR. HARRINGTON: Right. At times
21 people -- at one point people were allowed to
22 locate them at distances from the city of

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1 license of the main station, and then daisy-
2 chain them together so that one transmits to
3 the next and so forth.

4 And so you get some station --
5 using an example, let's say that you'd have a
6 station licensed to Winchester that would
7 suddenly have a translator in Adams Morgan.

8 The licensees in Washington would
9 say, "Why is this signal popping up in my
10 community? It's a competitor I don't want."

11 So the Commission said, "No, no.
12 Get back over there to the Shenandoah Valley.
13 That's where you belong."

14 MR. SHAINIS: And you had
15 interesting configurations of this thing.
16 When there was a hearing case, Torro in New
17 Jersey, that involved basically -- and even
18 the Bureau at that point was a media bureau.

19 It basically gave permission for
20 this guy to do it but they never understood
21 what they were giving permission to, and it
22 became a hearing. In any event.

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1 MR. HARRINGTON: The Commission
2 has now in its rule -- in its translator rule
3 it specifically prohibits using, for example,
4 microwave to transmit the signal of a
5 commercial station beyond its contours to a
6 translator.

7 It prohibits the daisy-chaining of
8 translators to dramatically increase the
9 service area of a station.

10 So the Commission, with lobbying
11 from other broadcasters, has basically decided
12 if you want to use it to fill in, fine. If
13 there's a situation, an unusual situation on
14 the very edge of your service area or a
15 community needs some service, that's okay.
16 But you're not going to be able to go into
17 someone else's market using translators.

18 ADMIN. JUDGE SIPPEL: All right.
19 I've just been educated. Thank you very much.

20 That answers Question C also,
21 doesn't it really, the onus in the operation.

22 MR. SHAINIS: Yes, it does.

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1 ADMIN. JUDGE SIPPEL: Maybe you've
2 made this clear, but what is being done with
3 that station right now? You've made an
4 application for it to be silent?

5 MR. SHAINIS: Yes. A request for
6 silent authority has been filed.

7 I have been advised, I have not
8 been privy to the negotiations that
9 arrangements are being made for the station to
10 resume operations carrying the signal of
11 another station in the market.

12 ADMIN. JUDGE SIPPEL: Say that
13 once more? I'm sorry.

14 MR. SHAINIS: I have been advised
15 -- I'm not privy to the negotiations, but I
16 have been advised that there are negotiations
17 by Mr. Floyd to attempt to carry the signal of
18 another station in the market.

19 MR. HARRINGTON: Your Honor, just
20 again to clarify --

21 ADMIN. JUDGE SIPPEL: Yes. Go
22 ahead.

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1 MR. HARRINGTON: I believe the
2 reason that Mr. Floyd's station is dark is
3 that Wilks-Reno has withdrawn its permission
4 to allow its signal to be rebroadcast by Mr.
5 Floyd's translator as a result of this
6 proceeding.

7 Therefore, since he doesn't have
8 -- you must have permission of the primary
9 station to be rebroadcast. Since he no longer
10 has that, he can't carry our signal. So he
11 has to find an alternative signal or go dark.

12 ADMIN. JUDGE SIPPEL: Okay. That
13 part of it I understood, but he's seeking now
14 to get another broadcaster who would use his
15 translator, so that he would then be in
16 compliance with the non-silence rule?

17 MR. SHAINIS: Basically, the
18 request that was filed, the STA -

19 ADMIN. JUDGE SIPPEL: The STA.

20 MR. SHAINIS: -- would allow him
21 to remain silent for six months. Then if he
22 was still silent after six months, he would

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1 file an extension of that.

2 But if he doesn't return to the
3 air in a year, then under the act the license
4 is automatically forfeited. At that point the
5 hearing is over, I assume, also.

6 ADMIN. JUDGE SIPPEL: All right.
7 It must return within a year? Okay.

8 I have seen -- I know something
9 about what STAs are. I'm not sure. It might
10 have been in that Peninsula case that there
11 were a lot of those around.

12 All right well, you and Mr.
13 Harrington are still proceeding with --

14 MR. HARRINGTON: We are, Your
15 Honor. We hope to provide some specific
16 material today which, based upon our
17 discussions yesterday, I hope will satisfy the
18 Enforcement Bureau.

19 Assuming that's the case, then we
20 hope to have a report to you fairly promptly
21 as to the resolution of the issues -- not
22 issues -- the resolution of the concerns of

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1 the Bureau.

2 ADMIN. JUDGE SIPPEL: Well there's
3 really two separate things, I think, going on
4 here. There's Wilks participation in this
5 case as a captured party.

6 MR. HARRINGTON: Yes, Your Honor.

7 ADMIN. JUDGE SIPPEL: And you want
8 release, having nothing to do with Mr. Floyd's
9 problems with bankruptcy, etcetera?

10 MR. HARRINGTON: We wish Mr. Floyd
11 all the best. But we would prefer not to be
12 in this proceeding at all, Your Honor.

13 ADMIN. JUDGE SIPPEL: You can only
14 go so far with helping people. Okay.

15 MR. SHAINIS: Your Honor, Mr.
16 Floyd would have no objection to Wilks'
17 disassociation from the proceeding.

18 ADMIN. JUDGE SIPPEL: Thank you.
19 Yes. I think that representation has been
20 made before, maybe not. No?

21 MR. SHAINIS: No. I don't believe
22 so.

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1 ADMIN. JUDGE SIPPEL: I'm glad to
2 hear it.

3 It was the other way around. Mr.
4 Harrington went along with your request for a
5 stay. That's neither here nor there.

6 No objection.

7 You can represent that in your
8 papers down the road. There will probably be
9 some kind of a joint submission or whatever
10 between --

11 MR. HARRINGTON: That's probably
12 anticipated Your Honor.

13 ADMIN. JUDGE SIPPEL: Yes.
14 Whatever is the easiest. But it has to have
15 some kind of -- it has to have a factual
16 basis.

17 MS. LEAVITT: Absolutely, Your
18 Honor.

19 MR. HARRINGTON: We're providing
20 them factual information, although I continue
21 to take the position that the issues in this
22 case relate to Mr. Floyd's qualifications and

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1 to whether or not the application for
2 assignment of license should be granted.

3 And with respect to that
4 application, since we are no longer a party to
5 a contract which would permit us to buy the
6 station, that there are no qualification
7 issues relating to my client.

8 Therefore, in reality we don't
9 believe it's appropriate, but to try to
10 resolve this in the spirit of cooperation,
11 which we have promised, we're trying to
12 provide the factual information as to which
13 the Bureau would like some background on.

14 I believe we can satisfy them. If
15 we do, then I think this will allow us to
16 reach agreement with the Enforcement Bureau to
17 allow us to be removed from the case.

18 ADMIN. JUDGE SIPPEL: As I
19 understand it, the nasty issue is whether or
20 not Wilks participated in some way in
21 preparing Mr. Floyd's application or renewal
22 application, or whatever it was. That's the

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1 basis for the charges.

2 MR. SHAINIS: There's no issue on
3 that, Your Honor. The issue is whether or not
4 he's qualified. And the question as to
5 whether he's qualified, as I understand it, is
6 based upon two things.

7 One is the fact that he was
8 convicted of a crime involving a felony. And
9 second, whether that was disclosed in the
10 application by Mr. Floyd.

11 I don't believe that that relates
12 to my client's obligations at all. Although,
13 again, I think the facts will prove we had no
14 involvement in any way.

15 ADMIN. JUDGE SIPPEL: There is an
16 aiding and abetting concept though, isn't
17 there?

18 MR. SHAINIS: There's no issue on
19 that.

20 ADMIN. JUDGE SIPPEL: There is no
21 issue. That's true. There is no issue.

22 MS. LEAVITT: There is no issue,

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1 Your Honor.

2 ADMIN. JUDGE SIPPEL: But it's
3 still a part of the scenario.

4 MR. HARRINGTON: As we continue to
5 point out, we would object to the use of the
6 discovery process for a fishing expedition to
7 try to develop evidence upon which to base a
8 motion for enlargement of issues.

9 This is why I had some difficulty
10 with answering some of the questions that were
11 in responding to some of the proposed
12 admissions from the Enforcement Bureau.

13 But we're trying to get that
14 behind us and I think we're doing a good job.
15 So I don't really want to make an issue of
16 that today if I can avoid it.

17 ADMIN. JUDGE SIPPEL: I do concur
18 -- go ahead. I'm sorry.

19 MS. LEAVITT: Your Honor, you are
20 right. There is an issue about whether Floyd
21 made false certifications in either one or
22 both of the applications, the assignment

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1 application or modification.

2 As we discussed I think pretty
3 thoroughly in the prehearing conference, the
4 fact is those applications were filed by Wilks
5 based on power of attorney information --
6 power of attorney signatures representing
7 Floyd.

8 But there are, and hopefully we'll
9 be able to resolve, some factual gaps as to
10 exactly how Wilks came to file those
11 applications with the representations made
12 therein by Eddie Floyd's power of attorney.

13 That's the Bureau's position.

14 MR. HARRINGTON: Your Honor, it's
15 our position that Wilks did not file any
16 applications. Applications were filed by
17 Counsel.

18 And Wilks was not involved. It
19 will be our position Wilks was not involved in
20 preparing Mr. Floyd's portion of the
21 application, and therefore is not responsible
22 for the material that was contained in the

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1 section of the application which relates to
2 Mr. Floyd.

3 I think, again, we're going to
4 provide a basis for that.

5 I think we've already provided
6 information that shows, for example, that we
7 received back from the Floyd interests a
8 signature page for the application that was
9 signed by Sherry Floyd, Mr. Floyd's wife.
10 Which to me shows that Mr. Floyd's
11 representative at least reviewed the
12 application before it was filed and signed off
13 on it.

14 I also have some other evidence
15 which will back that up.

16 MS. LEAVITT: Your Honor, we're
17 working with Wilks' Counsel in the spirit of
18 cooperation, and hopefully we will be able to
19 move forward on this issue, pending Bureau's
20 review and receipt of the documents that
21 they're planning to submit.

22 ADMIN. JUDGE SIPPEL: I think the

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1 wife had power of attorney, isn't that right?

2 MS. LEAVITT: Yes, Your Honor.

3 ADMIN. JUDGE SIPPEL: Do you want
4 to proceed by motion for summary decision?

5 MS. LEAVITT: I think there's the
6 pending motion of Wilks.

7 ADMIN. JUDGE SIPPEL: That's true.
8 There is.

9 MS. LEAVITT: Lorraine's pending
10 their motion for -- request for dismissal as
11 a party, so I think that's the issue that
12 we're talking about trying to resolve.

13 ADMIN. JUDGE SIPPEL: So that's the
14 vehicle I'm talking about, what vehicle do you
15 use?

16 MR. HARRINGTON: I think that
17 would be the vehicle, Your Honor.

18 Our position, at least from Wilks'
19 point of view, would be that since none of the
20 concerns address a designated issue there
21 really doesn't -- there's nothing to make a
22 summary decision about.

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1 Therefore it would be appropriate,
2 assuming we can satisfy the Bureau and it does
3 not seek enlargement of issues on some issues
4 I can't even think about -- it would be
5 appropriate to dismiss us a party, assuming we
6 reach agreement on it.

7 We can use the vehicle that's
8 already there.

9 MS. LEAVITT: By granting their
10 motion, Your Honor.

11 ADMIN. JUDGE SIPPEL: All right,
12 but your factual showing is going to include
13 just what you represented here, that Wilks had
14 nothing to do with preparing or filing the
15 paper, the document, the application. Is that
16 right?

17 MR. HARRINGTON: We did not
18 prepare -- Wilks did not prepare or file the
19 application. It did -- I have to be careful.

20 ADMIN. JUDGE SIPPEL: That's okay.

21 MR. HARRINGTON: It did convey to
22 the Floyd interests copies of material, then

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1 get OKs and convey that back to Counsel. So
2 I'm caught in a potential privilege issue
3 here. But there definitely there was
4 involvement only in acting as a conduit for
5 the parties.

6 ADMIN. JUDGE SIPPEL: Okay. I
7 hear you.

8 I'll take a look at it and see
9 what it's going to be. I'm very hopeful. I'm
10 very expecting that it can be handled that
11 way.

12 Then theoretically you'll be gone
13 by the end of the year. And this case will be
14 placed on hold, held in abeyance, or stayed
15 until we hear further word about what the
16 Court is doing.

17 MR. SHAINIS: Yes.

18 ADMIN. JUDGE SIPPEL: Then it
19 would be step-by-step after that. All right.

20 I'm going to issue an appropriate
21 order then that covers all of that.

22 I'm really not concerned about

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1 setting a time frame.

2 What time do you think all these
3 papers could come in on the --

4 MR. HARRINGTON: We're hoping to
5 provide something to the Bureau today.

6 I'm assuming that the executives
7 of our client can review the draft
8 declarations, which we're working on, and give
9 the OK to provide them to Counsel of the
10 Bureau.

11 Then the Bureau we have suggested
12 would review them before they're executed so
13 that we can make sure that if they have any
14 further questions, we can answer them and get
15 it all resolved in one set of papers.

16 So I'm hoping we can get it
17 resolved by mid-next week.

18 MS. LEAVITT: Or thereabouts.

19 ADMIN. JUDGE SIPPEL: Well, with
20 all these things coming, I'll tell you what.
21 I'm either going to want, I'll call them
22 disposition papers here, or a status by mid-

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1 January.

2 Mr. Shainis, from your side the
3 case itself would be stayed indefinitely, as
4 well as all of the outstanding motions that
5 haven't been addressed and all of the
6 outstanding orders which are still maybe in
7 contest.

8 Do you have any objection to that?

9 MR. SHAINIS: No, Your Honor.

10 ADMIN. JUDGE SIPPEL: Okay.
11 You're next. The same thing, I guess. Your
12 status report would be mid-January, if that's
13 okay.

14 MR. HARRINGTON: Not a problem,
15 Your Honor.

16 ADMIN. JUDGE SIPPEL: Of course,
17 if something develops before then you know
18 where to find me.

19 All right. Thank you very much.

20 MR. SHAINIS: Thank you.

21 MR. HARRINGTON: Thank you, Your
22 Honor.

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1 MS. LEAVITT: I'm sorry. Just a
2 couple of very minor housekeeping issues.

3 My Co-Counsel, Anita Patankar-
4 Stoll, received an offer she couldn't refuse
5 so she's transferring to another bureau. So
6 parties do not need to copy her any longer on
7 any filings.

8 ADMIN. JUDGE SIPPEL: Okay. I
9 thought maybe she was going to AT&T or
10 something like that. Another bureau?

11 MS. LEAVITT: Another bureau.

12 ADMIN. JUDGE SIPPEL: That's even
13 better.

14 MS. LEAVITT: There you go, Your
15 Honor.

16 ADMIN. JUDGE SIPPEL: All right.
17 Thank you very much for alerting us to that.

18 Okay. I've got to get upstairs
19 and start drafting before I forget what we're
20 talking about here.

21 We'll all have the transcript.

22 Thank you very much. You all have

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1 a good weekend.

2 (Whereupon, at 10:48 a.m. the
3 hearing was concluded.)
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Eddie Floyd, et al

Name of Hearing

MB DOCKET NO. 10-157

Docket No. (if applicable)

445 12th STREET, S.W., WASHINGTON, D.C.

Place of Hearing

December 3, 2010

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 56 through 105, inclusive, are the true, accurate and complete transcript prepared from the reporting by Brandon Patterson (Reporter's Name) in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription statement of Work and have verified the accuracy of the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

December 3, 2010

Brandon Patterson

Date

Legible Name and Signature of Reporter

Name of Company: Neal Gross Co.

December 3, 2010

Judy Hadley

Date

Legible Name and Signature of Transcriber

Name of Company: Neal Gross Co.

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Tracy Cain

Date

Legible Name and Signature of Proofreader

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